

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**CASSANDRA TOWNSEND**

Claimant

VS.

**PRINCIPAL RESIDENTIAL MORTGAGE, INC.**

Respondent

AND

**PRINCIPAL INSURANCE CO.**

Insurance Carrier

Docket No. 1,017,981

**ORDER**

Respondent and its insurance carrier (respondent) requests review of the April 8, 2005 preliminary hearing Order entered by Administrative Law Judge (ALJ) Steven J. Howard.

**ISSUES**

The ALJ denied claimant's request for temporary total disability benefits but granted her request for treatment with Dr. Gonzalez for her upper extremity complaints. In doing so, the ALJ implicitly concluded claimant provided the statutorily required notice.

The respondent requests review of this decision alleging the claimant failed to provide timely notice as required by K.S.A. 44-520. Even if claimant is found to have provided timely notice, respondent disputes whether "medical treatment and unauthorized medical treatment should be ordered in this matter."<sup>1</sup>

Claimant argues the ALJ's Order should be affirmed. Claimant first contends that she provided timely written notice under K.S.A. 44-5a17, the occupational disease statute. While claimant's leave of absence began on March 27, 2004, it was not until July 9, 2004 that claimant learned she was in need of surgery for her bilateral carpal tunnel condition. Then, on July 13, 2004 she filed a claim for compensation, which is well within the 90 day statutory requirement in K.S.A. 44-5a17. Thus, not only is her claim timely, claimant

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<sup>1</sup> Respondent's Brief at 1 (filed Apr.29, 2005).

maintains the ALJ appropriately awarded her the unauthorized medical allowance and designated Dr. Gonzales.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant alleges a series of repetitive traumas occurring while in respondent's employ beginning in March of 2003 and ending on March 27, 2004, claimant's last date of work.<sup>2</sup> According to claimant, she was initially employed by respondent in the customer service area. Then, in September 2003, she was reassigned to a full-time customer service data entry position. Claimant maintains that after that reassignment, she began to notice numbness in her fingers and a little wrist irritation and soreness.<sup>3</sup> Because claimant had experienced similar symptoms in the past, she knew to begin wearing a wrist splint in an effort to minimize her complaints. In fact, claimant had been diagnosed with right carpal tunnel syndrome back in 2001 following an EMG.<sup>4</sup>

Claimant also proceeded to seek treatment on her own through her private health insurance carrier. Bilateral carpal tunnel syndrome was suspected as of June 12, 2003, before her position reassignment. In August 2003 the bilateral condition was confirmed by EMG. She eventually underwent two surgeries to her right hand in 2005. Claimant was also evaluated, at her lawyer's request, by Dr. P. Brent Koprivica, who has recommended physical therapy and a psychological evaluation.

Claimant continued to work for respondent up to March 27, 2004. There is no evidence or testimony within the record that suggests claimant brought her bilateral hand complaints to her employer's attention at any point before leaving her position other than wearing wrist splints. In April 2004, claimant sought and was granted short term disability benefits dating back to her last date of work, March 27, 2004. The application indicates claimant was suffering from chest discomfort, headache[s], dizziness and numbness on the right side of her body. This form indicates claimant's representation that these complaints have no relationship to work.<sup>5</sup> Claimant testified her request for a leave of

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<sup>2</sup> The E-1 filed with the Division does not specifically indicate whether claimant is asserting a series of repetitive injuries or an occupational disease. It merely references March 27, 2004. The span of dates referenced above comes from the ALJ's recitation at the commencement of the preliminary hearing.

<sup>3</sup> P.H. Trans. at 9.

<sup>4</sup> *Id.*, Resp. Ex. A at 5 (Dr. Cochran's report).

<sup>5</sup> *Id.*, Resp. Ex. A at 1.

absence was not due to her hand complaints but rather to the high blood pressure problems she was experiencing.<sup>6</sup>

Claimant testified that when she left work on March 27, 2004, she did not tell anyone at her employment that she was having any hand problems because of her work activities.<sup>7</sup> She further testified that even up to the time she had surgery on June 17, 2004 she did not inform her employer of the work-related nature of her complaints.<sup>8</sup> Claimant admits the first notice she provided to her employer was the claim that was filed with the Division on July 13, 2004.

The Board has considered the evidence contained within the record and finds the ALJ's Order should be reversed.

K.S.A. 44-520 provides:

**Notice of injury.** Except as otherwise provided in this section, proceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary. The ten-day notice provided in this section shall not bar any proceeding for compensation under the workers compensation act if the claimant shows that a failure to notify under this section was due to just cause, except that in no event shall such a proceeding for compensation be maintained unless the notice required by this section is given to the employer within 75 days after the date of the accident unless (a) actual knowledge of the accident by the employer or the employer's duly authorized agent renders the giving of such notice unnecessary as provided in this section, (b) the employer was unavailable to receive such notice as provided in this section, or (c) the employee was physically unable to give such notice.

In order to determine whether timely notice has been given, the finder of fact must determine the appropriate date of accident. Under Kansas law, the date of accident in a workers' compensation action involving carpal tunnel syndrome is the last day on which claimant performs services for his or her employer.<sup>9</sup> In this instance, that was March 27, 2004.

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<sup>6</sup> *Id.* at 9.

<sup>7</sup> *Id.* at 21.

<sup>8</sup> *Id.*

<sup>9</sup> *Berry v. Boeing Military Airplanes*, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994).

Although claimant contends<sup>10</sup> that the timeliness of her claim is governed by K.S.A. 44-5a01, the Board disagrees. While our courts have noted that carpal tunnel syndrome bears some of the characteristics of an occupational disease, the syndrome has not been treated as an occupational disease for purposes of notice. Rather, K.S.A. 44-520 has governed the issue of notice.

Based upon the evidence as presently developed, the Board concludes that claimant failed to provide notice within either the 10 days or the 75 days prescribed by the applicable statute. The parties agree that March 27, 2004 was claimant's last date worked and as such, that date would be considered her "date of accident" for purposes of establishing the timeliness of her claim. By her own admission, claimant never informed her employer of her work-related complaints until July 13, 2004. That date was 108 days after her last date worked. Accordingly, claimant has failed to satisfy a necessary element to her claim, that of a timely notice, under K.S.A. 44-520.

The ALJ's preliminary hearing Order must be reversed and his order for respondent to provide medical benefits is set aside.

As provided by the Workers Compensation Act, preliminary hearing findings are not final, but subject to modification upon a full hearing on the claim.<sup>11</sup>

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Steven J. Howard dated April 8, 2005, is reversed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of May, 2005.

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BOARD MEMBER

c: Keith V. Yarwood, Attorney for Claimant  
Joseph R. Ebbert, Attorney for Respondent and its Insurance Carrier  
Steven J. Howard, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>10</sup> Claimant asserts this argument for the first time on appeal. When the case was brought before the ALJ, the issues were itemized on the record. The ALJ specifically stated that claimant was making a "claim for a series of repetitive traumas commencing in March of 2003 through March 27, 2004. . . Respondent denies notice." (P.H. Trans. at 3) Nowhere in the transcript does claimant allege an occupational disease.

<sup>11</sup> K.S.A. 44-534a(a)(2).